REMARKS

Reconsideration and withdrawal of the rejections of the claimed invention is respectfully requested in view of the amendments, remarks and enclosures herewith, which place the application in condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 1-14, 16 and 17 are pending in this application. No new matter has been added by this amendment.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited in the Office Action, and that these claims were in full compliance with the requirements of 35 U.S.C. § 112. The amendments of the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

II. THE 35 U.S.C. 103(a) REJECTION HAS BEEN OVERCOME

Claims 1-14, 16 and 17 were rejected as allegedly being obvious by Paul (U.S. Patent 5,556,230). The applicants request reconsideration of this rejection for the following reasons.

The applicants' invention as represented by claim 1 contains several limitations and reads as follows:

"A dispenser for controlled release of volatile substances, comprising:

> a reservoir covered on its top face and on its bottom face by a first control element, said reservoir containing at least one volatile substance,
>
> a **first control element**, which exerts a control function that is dependent on the physical properties of the at least one volatile substance and the material properties of the constituents of the first control element, said control element is fully covered by a second control element and
>
> a **second control element** which exerts a control function that is independent of the physical properties of the at least one volatile substance and the material properties of the constituents of the first control element
>
> wherein the second control element is a material which is impermeable to the at least one volatile substance and is in the form

> of a **film that possesses gaps** wherein the number of said gaps is from 500 to 8000 gaps per m^2 of said film."

In order to establish obviousness, all of the claim limitations must be taught or suggested by the combination of references or knowledge generally accepted in the art. *See MPEP 2143.03*. However, Paul does not meet this standard.

The applicants' claims describe two different control elements which have two different modes of action, i.e. the ***first control element*** exerts a control function which is ***dependent*** on the physical properties of the at least one volatile substance and the material properties of the constituents of the first control element; and a ***second control element*** which exerts a control function which is ***independent*** on the physical properties of the at least one volatile substance and the material properties of the constituents of the first control element (diffusion and non-diffusion control).

While the membrane layer 50 meets the requirements to be characterized as being similar to the applicants' first control element, the side wall 22 of Paul does not constitute the second control element of the applicants' invention as alleged in the office action.

Paul states in col. 7, lines 37-43 that "[i]n order to form container or housing 21, side walls or panels 22 and 23 are placed in overlying contacting engagement with each other and intimately bonded together about their outer peripheral edges. In this way, a completely scaled, impervious container or housing 21 is formed which is sealed about all four sides thereof and incorporates an interior holding zone or pouch 24."

This means that element 22 of Paul is a film or foil made of a packaging material which is used for the manufacturing of a sealed pouch, i.e. forms the impervious side wall of their pouch, ***NOT a second control element*** as disclosed in the applicants' claims.

The mode of action of the side wall 22 of Paul is described by Paul in col. 11, lines 5-14 – "If desired, an alternate access system can be employed as shown in FIG. 5. In this access system, a flap member 51 is formed in side wall or panel 22 by incorporating a plurality of flap-defining notches 52 in the top surface of side wall or panel 22. In the preferred construction, flap-forming notches 52 extend from the outside surface of side wall or panel 22 to metal layer 43 of side wall or panel 22, in order to assure that the interior of dispensing system 20 is scaled and the air freshening/deodorizing composition is not dispensed prematurely."

This means that Paul's side walls 22 do not have gaps, because it is clearly stated that said notches are only in the outside surface of the side walls 22 to the metal layer 43 (see Figures 2 and 3). Therefore, at least this metal layer within the various layers of side wall 22 is not perforated and **do not possess gaps.**

Paul's difference compared to the applicants' invention is also apparent when reviewing Paul's description about the mode of action for side wall 22 (see col. 11, lines 15-22):
"Whenever a consumer is ready to employ dispensing system 20, flap 51 is held by suitable means, such as an access tab, which enables flap 51 to separate from side wall or panel 22, revealing permeable membrane 50. Once flap 51 has been opened to the desired extent, the air freshening/deodorizing composition contained in wicking means 30 is capable of passing through the pores of permeable membrane 50 and into the surrounding ambient air."

This means that the release of the volatile substance in Paul's invention (fragrance/air freshening composition) is only controlled by diffusion through said permeable membrane 50. There is no control by a second element because flap 51 of Paul of side wall 22 is removed and therefore the volatile substance has no opportunity to move through side wall 22.

In summary, Paul does not teach or suggest all elements of the applicants claimed invention as there: (1) is no second control element: (2) no gaps in the second control element; and (3) no indication that the first control element is covered by the second control element and because of the design of Paul's device, there is no expectation of success for making any of the modifications suggested in the office action, much less three (3) simultaneous modifications. Therefore, Paul does not render the applicants' claimed invention to be obvious.

CONCLUSION

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution. The Commission is authorized to charge any fee occasioned by this paper, or credit any overpayment of such fees, to Deposit Account No. 50-0320.

Respectfully submitted,
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